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10/541,560	07/06/2005	Stefan Breuer	PHIDE030002US	5826
38107 7590 08/21/2008 PHILIPS INTELLECTUAL PROPERTY & STANDARDS 595 MINER ROAD CLEVELAND, OH 44143				
EXAMINER NAQI, SHARICK				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,560

Applicant(s)

BREUER ET AL.

Examiner

Sharick Naqi

Art Unit

3736

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-8 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) 17-19 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-8, 10-16 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species 2 in the reply filed on April 18, 2008 is acknowledged.

Applicant stated that claims 3-8, 10-17 and 20-21 read on the elected species. However, claims 17 and 21 do not read on the elected species because they do not include the software for changing modes and instead claim a mechanical switch which corresponds to unelected species 1. Claims 17, 18, 19 and 21 are withdrawn from consideration for being drawn to the unelected species. Examiner has examined claims 3-8, 10-16 and 20.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 3-8, 10-16 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Sellers US Patent No. 5,678,562 (Provided by the Applicant).

4. A method of communicating with a medical device, in which an interface is provided to which either measurement means or an external device can be connected and via which measured signals or data are transmitted from the measurement means or the external device to the medical device:

wherein the interface operates in a measurement mode when measurement means are connected and in a communication mode when an external device is connected (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17. The disk cartridge 26 of the embodiment that does not require the wireless data modem 28 meets the claim language);

wherein a changeover between measurement mode and communication mode is effected automatically depending on whether the measurement means or an the external device are or is connected to the interface (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

3. The method as claimed in claim 4 wherein:

in the communication mode, a software update is transmitted from a connected external device into the medical device via the interface (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17);
and

in the measurement mode analog signals are transmitted from a sensor into the medical device via the interface (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

5. The method as claimed in claim 4, wherein the automatic changeover is effected by means of software of the medical device, a switch at the interface or electronically by an operating mode circuit in the medical device (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

6. The method as claimed in claim 4, wherein the interface comprises contacts which can be used both in the measurement mode and in the communication mode (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

7. The method as claimed in claim 6, wherein all contacts required for the communication mode can also be used in the measurement mode (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

8. An apparatus for communicating with a medical device, which apparatus comprises

an interface that is designed such that each an analog measurement means and a digital external device can be connected to said interface one at a time and analog measured signals from the analog measurement means can be received via said

interface when the analog measuring means is connected to said interface and digital data can be transferred via said interface when the digital external device is connected with said interface (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

10. The apparatus as claimed in claim 8, wherein the interface is configured such that it operates in a measurement mode when measurement means are connected and in a communication mode when an external device is connected (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

11. The apparatus as claimed in claim 10 or a the medical device as claimed in claim 16, wherein the interface is configured such that in the communication mode a software update can be transmitted from a connected external device into the medical device via the interface (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

12. The apparatus or medical device as claimed in claim 10, wherein the interface is configured such that a changeover between the measurement mode and the communication mode is effected automatically (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

13. The apparatus or a medical device as claimed in claim 12, wherein software is designed for implementing changeover automatically, or a switch at the interface or an operating mode circuit in the medical device is provided for-causing the changeover automatically (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

14. The apparatus as claimed in claim 8, wherein the interface comprises contacts which are used both in a measurement mode and in the communication mode (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

15. The apparatus as claimed in claim 14, wherein all contacts required for the communication mode are also used in the measurement mode (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

16. A medical device which receives analog data from sensors in a measurement mode and communicates digitally with a digital external device in a communication mode, the medical device comprising:

an interface including:

a set of contacts, the contacts being configured to receive

(1) a plug connected by a lead to the analog sensor (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17), and

(2) a plug connected by a lead with the digital external device, the contacts being configured such that the contacts can only connect with one of the analog sensor plug and the digital external device plug at a time (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17); and

a means for recognizing whether the contacts are connected with the analog sensor plug or with the digital external device plug and switching the interface between the measurement mode and the communication mode (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

20. The medical device as claimed in claim 16, wherein the recognizing means includes:

a software routine that detects whether digital or analog data is received and which switches the interface into the communication mode when digital signals are received and into the measurement mode when analog signals are received (Figure 5, column 2, lines 22-62, Column 6, lines 10-34 and 65-67, column 7, lines 28-54, column 11, lines 10-17).

Claims 3-8, 10-16 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Mault US Patent No. 6,790,178.

4. A method of communicating with a medical device, in which an interface is provided to which either measurement means or an external device can be connected and via which measured signals or data are transmitted from the measurement means or the external device to the medical device:

wherein the interface operates in a measurement mode when measurement means are connected and in a communication mode when an external device is connected (Figure 3, element 46, column 9, lines 1-32);

wherein a changeover between measurement mode and communication mode is effected automatically depending on whether the measurement means or an the external device are or is connected to the interface (Figure 3, element 46, column 9, lines 1-32).

3. The method as claimed in claim 4 wherein:

in the communication mode, a software update is transmitted from a connected external device into the medical device via the interface (Figure 3, element 46, column 9, lines 1-32); and

in the measurement mode analog signals are transmitted from a sensor into the medical device via the interface (Figure 3, element 46, column 9, lines 1-32).

5. The method as claimed in claim 4, wherein the automatic changeover is effected by means of software of the medical device, a switch at the interface or

electronically by an operating mode circuit in the medical device (Figure 3, element 46, column 9, lines 1-32).

6. The method as claimed in claim 4, wherein the interface comprises contacts which can be used both in the measurement mode and in the communication mode (Figure 3, element 46, column 9, lines 1-32).

7. The method as claimed in claim 6, wherein all contacts required for the communication mode can also be used in the measurement mode (Figure 3, element 46, column 9, lines 1-32).

8. An apparatus for communicating with a medical device, which apparatus comprises
an interface that is designed such that each an analog measurement means and a digital external device can be connected to said interface one at a time and analog measured signals from the analog measurement means can be received via said interface when the analog measuring means is connected to said interface and digital data can be transferred via said interface when the digital external device is connected with said interface (Figure 3, element 46, column 9, lines 1-32).

10. The apparatus as claimed in claim 8, wherein the interface is configured such that it operates in a measurement mode when measurement means are connected and

in a communication mode when an external device is connected (Figure 3, element 46, column 9, lines 1-32).

11. The apparatus as claimed in claim 10 or a the medical device as claimed in claim 16, wherein the interface is configured such that in the communication mode a software update can be transmitted from a connected external device into the medical device via the interface (Figure 3, element 46, column 9, lines 1-32).

12. The apparatus or medical device as claimed in claim 10, wherein the interface is configured such that a changeover between the measurement mode and the communication mode is effected automatically (Figure 3, element 46, column 9, lines 1-32).

13. The apparatus or a medical device as claimed in claim 12, wherein software is designed for implementing changeover automatically, or a switch at the interface or an operating mode circuit in the medical device is provided for-causing the changeover automatically (Figure 3, element 46, column 9, lines 1-32).

14. The apparatus as claimed in claim 8, wherein the interface comprises contacts which are used both in a measurement mode and in the communication mode (Figure 3, element 46, column 9, lines 1-32).

15. The apparatus as claimed in claim 14, wherein all contacts required for the communication mode are also used in the measurement mode (Figure 3, element 46, column 9, lines 1-32).

16. A medical device which receives analog data from sensors in a measurement mode and communicates digitally with a digital external device in a communication mode, the medical device comprising:

an interface including:

a set of contacts, the contacts being configured to receive (Figure 3, element 46, column 9, lines 1-32)

(1) a plug connected by a lead to the analog sensor (Figure 3, element 46, column 9, lines 1-32), and

(2) a plug connected by a lead with the digital external device, the contacts being configured such that the contacts can only connect with one of the analog sensor plug and the digital external device plug at a time (Figure 3, element 46, column 9, lines 1-32); and

a means for recognizing whether the contacts are connected with the analog sensor plug or with the digital external device plug and switching the interface between the measurement mode and the communication mode (Figure 3, element 46, column 9, lines 1-32).

20. The medical device as claimed in claim 16,
wherein the recognizing means includes:

a software routine that detects whether digital or analog data is received and which switches the interface into the communication mode when digital signals are received and into the measurement mode when analog signals are received (Figure 3, element 46, column 9, lines 1-32).

Response to Arguments

Applicant's arguments filed December 13, 2007 have been fully considered but they are not persuasive.

Applicant argues that Sellers does not reject the claimed invention. The Examiner respectfully disagrees. For example, independent claim 4 states:

"A method of communicating with a medical device, in which an interface is provided to which either measurement means or an external device can be connected and via which measured signals or data are transmitted from the measurement means or the external device to the medical device:

wherein the interface operates in a measurement mode when measurement means are connected and in a communication mode when an external device is connected;

wherein a changeover between measurement mode and communication mode is effected automatically depending on whether the measurement means or the external device are or is connected to the interface."

Sellers discloses a disk cartridge that plugs into standard connectors in an ambulatory physiological monitor and in a computer (column 2, lines 35-37). The disk cartridge is analogous to the medical device with an interface because it plugs into both an ambulatory physiological monitor, analogous to measurement means, and a computer, analogous to an external device. The disk cartridge receives physiological data when connected to the physiological monitor, thus operating in a measurement mode, and transfers the data to the computer when connected to the computer, thus operating in a communication mode (Column 2, lines 38-62). The change in modes occurs depending on what device the disk cartridge is connected to, therefore the changeover is automatic. The remaining claims are rejected using substantially the same reasoning.

Applicant argues that Mault does not reject the claims because medical device 30 connects with calorimeter 42 and digital device 10, 44 via different interfaces. The Examiner respectfully disagrees. For Example, in regards to independent claim 4, the Examiner is considering the Memory Module 46, shown in Figure 3, a medical device. Memory Module 46 uses the same interface to connect to the Calorimeter 42, analogous to measurement means, and the PDA 44, analogous to an external device. The Memory Module 46 receives physiological data when connected to the calorimeter,

thus operating in a measurement mode, and transfers the data to the PDA 44 when connected to the PDA, thus operating in a communication mode (Column 9, lines 1-33). The change in modes occurs depending on what device the Memory Module 46 is connected to, therefore the changeover is automatic. The remaining claims are rejected using substantially the same reasoning.

In regard to limitations claiming the software for switching modes, Applicant is advised that software by itself is given limited patentable weight in apparatus claims because it lacks structure that would be attributed to the apparatus claims. Thus the prior art is sufficient to reject the claims because a change in the two modes occurs depending upon which device is attached to the interface.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharick Naqi whose telephone number is (571)272-3041. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. N./
Examiner, Art Unit 3736

/Michael C. Astorino/
Primary Examiner, Art Unit 3736

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August 18, 2008.